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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,472	07/16/2003	David S. Rathbun	001227.0110	7370

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EXAMINER
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BOLES, SAMEH RAAFAT

ART UNIT	PAPER NUMBER
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3775

MAIL DATE	DELIVERY MODE
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10/05/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/619,472	<b>Applicant(s)</b> RATHBUN ET AL.	
	<b>Examiner</b> SAMEH BOLES	<b>Art Unit</b> 3775	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 6-13, 15-18, 20 and 25-41 is/are pending in the application.
- 4a) Of the above claim(s) 15-17 and 41 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13, 25-27 and 38-40 is/are allowed.
- 6) ☒ Claim(s) 6-13, 18, 20 and 25-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/30/08, 12/20/05, 12/2/04</u> .                              | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

According to the Amendment filed on October 17, 2007, claims 68-10, 12, 13, 16 and 25 have been amended, claims 1-5, 14, 19 and 21-24 have been cancelled, and claims 31-41 have been added.

### ***Election/Restrictions***

1. Applicant's election without traverse of species (3) illustrated in Fig. 11 in the reply filed on July 13, 2009 is acknowledged. Accordingly, claims 15-17 and 41 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 6, 7, 11, 18, and 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kolb et al. (US. Pub. NO. 2004/0186482 A1) in view of Huebner (US. Pat. No. 6,494,913 B1).

Kolb et al disclose a surgical drill guide assembly (figure 1 and 9A) comprising: an outer stem (12) having a bore and a longitudinal axis; at least one drill guiding barrel (20a and 20b) having a passageway, the passageway having a predetermined trajectory, the predetermined trajectory being at a substantially fixed angle with respect to the outer stem, the at least one drill guiding barrel configured to receive and guide a

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surgical drill bit, wherein the at least one drill guiding barrel is movably attached to the outer stem by a hinge (68, Fig. 9B) and a T-shape slot (74, Fig. 11) (paragraph [44]) such that the fixed angle of the drill guiding barrel remains constant throughout movement of the drill guiding barrel about the outer stem; a rod (14, Fig. 3 ) at least partially disposed in the bore and releasably attached to both the outer stem and a bone plate (Fig. 7); and a locking release mechanism (26, Fig.3) for securing the outer stem to the rod (paragraphs [7 and 30]); a handle member (22) offset from the stem by an offset handle arm; the rod is threaded (28, Fig. 3) at one end (14b); the offset handle arm is mechanically attached to outer stem; rotation of the proximal end (14a, Fig. 1) of the rod causes the rod to rotate with respect to the outer stem to attach and unattach the rod from the bone plate.

Kolb et al disclose the claimed invention except that the drill guiding barrel is pivotably attached to the outer stem such that the fixed angle of the drill guiding barrel remains constant throughout movement of the drill guiding barrel about the outer stem; and except that the drill guide barrel has a depth stop for preventing a drill bit from exceeding a pre-determined depth.

Huebner discloses a drill guiding barrel (343, Fig. 31) is attached to the outer stem by a hinge (310); the drill guiding barrel and the hinge (343 and 310, Fig. 31) is pivotably attached to the outer stem such that the fixed angle of the drill guiding barrel remains constant throughout movement of the drill guiding barrel about the outer stem (col. 10, lines 10-11); and the drill guide barrel has a depth stop (the top surface of the drill guide barrel 343) for preventing a drill bit from exceeding a pre-determined depth

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(col. 10, lines 59-60).

It would have been obvious to a person of ordinary skill in the art at the time of the invention was made to modify the hinge and the drill guiding barrel of Kolb et al to be pivotably attach to the outer stem in view of Huebner; and to modify the drill guide barrel Kolb et al with a depth stop in view of Huebner for facilitating adjusting the position and location of the drill guide barrel; and for preventing a drill bit from exceeding a pre-determined depth, respectively.

4. Claims 8-10, 20 and 31-34 rejected under 35 U.S.C. 103(a) as being unpatentable over Kolb et al. (US. Pub. NO. 2004/0186482 A1) in view of Estes et al. (US. Pub. No. 2003/0032865 A1).

Kolb et al disclose the claimed invention except that (1) the handle member pivots in relation to the offset handle arm; (2) a button cam being moveable between a first position and a second position, wherein the handle member is fixed with respect to the offset handle arm when the button cam is in the first position and the handle member is pivoted about the offset handle arm when the button cam is in the second position wherein the button cam is biased towards the first position; (3) the handle member and offset handle arm are releasably locked in angular position by detents on said button cam being moved into or out of engagement with detent grooves in the handle member.

Estes et al disclose a handle member (12, Fig. 1a) pivots in relation to the offset handle arm (abstract); a button cam (23) being moveable between a first position and a second position, wherein the handle member is fixed with respect to the offset handle

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arm when the button cam is in the first position and the handle member is pivoted about the offset handle arm when the button cam is in the second position wherein the button cam is biased towards the first position (paragraphs [48-50]); and the handle member and offset handle arm are releasably locked in angular position by detents (29) on said button cam being moved into or out of engagement with detent grooves (26) in the handle member (paragraphs [48-50]).

It would have been obvious to a person of ordinary skill in the art at the time of the invention was made to modify the handle of Kolb et al to be pivotably attach to the offset handle arm in view of Estes et al for facilitating adjusting the position and location of the handle member relative to the outer stem.

Kolb et al disclose the claimed invention except that (1) the release mechanism and the end of the rod have a non-circular cross-section.

It would have been an obvious matter of design choice to one skilled in the art at the time the invention was made to construct the release mechanism and the end of the rod of Kolb et al to have a non-circular cross-section. One of ordinary skill in the art, furthermore, would have expected the invention of Kolb et al, and applicant's invention, to perform equally well and to perform the same function of rotating the rod inside the outer stem and to lock the rod to the outer stem. In re Dailey and Eilers, 149 USPQ 47 (1966).

5. Claims 12 and 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kolb et al. (US. Pub. NO. 2004/0186482 A1) in view of Jarvis (US. Pat. No. 5,873,289).

Kolb et al disclose the claimed invention except that (1) the outer stem includes one or more ball detents located therein and a groove located on the rod; (2) the release mechanism is axially moveable with respect to the outer stem, the release mechanism being moveable from a first position to a second position, wherein in the first position the outer stem is fixed with respect to the rod and wherein in the second position the outer stem is moveable with respect to the rod; and (3) the release mechanism is biased toward the first position.

Jarvis discloses a releasable locking connector for tool comprising an elongated body (may be considered as the outer stem) having a square end (non-circular cross-section) at one end for introduction into a complementary opening in a socket (may be considered as the release mechanism), said body and square end having at least one elongated groove formed therein, a detent blade slidably seated in said groove; a spring biased collar on said body and operably attached to said detent blade, said collar being normally biased in a first position wherein the attached detent blade is in a first position protruding from said groove so as to engage and lock in said opening in the socket, said collar being slidable to a second position wherein the attached detent blade recedes within the groove to release the detent blade from the opening in the socket (claim 1).

It would have been obvious to a person of ordinary skill in the art at the time of the invention was made to modify the release mechanism of Kolb et al with detent blades in view of Jarvis for effectively securing the release mechanism to the outer stem.

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Kolb et al in view of Jarvis disclose the claimed invention except that the detents are detent blades instead of ball detents, however One of ordinary skill in the art would have expected the securing features of Jarvis, and applicant's invention, to perform equally well and to perform the same function of locking / releasing the release mechanism to/ from the end of the outer stem, Therefore, because these two mechanisms were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute the detent blades of Jarvis with ball detents for effectively securing the release mechanism to the outer stem.

### ***Allowable Subject Matter***

6. Claims 13, 25-27 and 38-40 are allowable.
7. The indicated allowability of claim 20 is withdrawn in view of the newly discovered reference(s) to Kolb et al. (US. Pub. NO. 2004/0186482 A1) in view of Estes et al. (US. Pub. No. 2003/0032865 A1) (see the rejections based on the newly cited reference(s) above).

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SAMEH BOLES whose telephone number is (571)270-



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5537. The examiner can normally be reached on Monday - Friday 7:30am - 5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas C. Barrett can be reached on (571)272-4746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/SAMEH BOLES/  
Examiner, Art Unit 3775

/Thomas C. Barrett/  
Supervisory Patent Examiner, Art  
Unit 3775